

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 956 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

HARIRAM N RAMANUJ

Versus

DIVISIONAL CONTROLLER

Appearance:

MR HK RATHOD for Petitioner

MR HARDIK C RAWAL for Respondent No. 1

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 15/07/96

ORAL JUDGEMENT

Hariram Natverlal Ramanuj has filed the present petition under article 227 of the Constitution of India against the order passed by the Labour Court, Rajkot in Ref.(LCR) No.427 of 1982 decided on 21.1.84.

2. The petitioner Hariram Natverlal was working as a

conductor with the respondent corporation. On 15.12.1979 he was on duty on bus route no.3 in the city bus depot. The bus was checked at a distance of 1.50 kms. from the Central Bus Station. At that time it was found that he had not issued tickets to 21 passengers in the said bus. At the time of checking it was also found that he was in the process of issuing tickets to the passengers. As regards this incident the petitioner was charge-sheeted and departmental inquiry was held and ultimately he was found guilty of the charges levelled against him and he was dismissed from service and therefore, the petitioner had approached the Labour Court, Rajkot. The Labour Court, Rajkot had found that the departmental inquiry held against the present petitioner was valid and legal and that no infringement was committed in conducting the same. He also found that present petitioner had committed the misconduct of not issuing tickets to 21 passengers in his bus which was contrary to the rules and regulations of the corporation. He further found that though he was found guilty of misconduct alleged against him, the order of dismissal was disproportionate punishment and consequently he held that he was justified in using a discretion under section 11-A of the ID Act and reduced the sentence and therefore, he ordered reinstatement of the present petitioner without back wages.

3. The petition is preferred against the said order and the main grievance as regards the said order was non payment of total back wages to the present petitioner. It is disputed before me by Mr. Rathod, learned advocate for the petitioner that the petitioner was dismissed from service from 16.9.80 and the order of the Labour Court is dated 21.1.84. In support of the said contention Mr. Rathod has placed reliance on the judgment of this court in SCA No. 3825/81 decided on 7.12.83 and he has placed reliance on the following observations of His Lordship Mankad-J:

"As rightly held by the Labour Court normal rule as laid down by the Supreme Court is that full back wages should be awarded while ordering reinstatement, and if the workman was ready to work keep away therefrom on account of invalid act of the employer there is no justification for not awarding him full back wages which are legitimately due to him. It is for the employer to establish the circumstances necessitating departure from the normal rule. In the present case the employer has failed to establish any

circumstances which would justify denial of full back wages to the workman. The only ground on which the Labour Court has refused to award full back wages to the workman is that workman could have applied for job to the Employment Exchange and that there was no evidence to prove that he had made application to other employers. The reason given by the Labour Court for not awarding full back wages is far from convincing. It is proved by evidence on record that the workman was not gainfully employed after his services were terminated by the employer. He is therefore, entitled to the benefit of full back wages on his reinstatement."

(emphasis is supplied by me)

If the above judgment is considered then it would be quite clear that if the order of dismissal has been set aside by the Labour Court, then the labourer or worker is entitled to get his full back wages as though he was ready to work, he was kept away on account of the act of the employer. If the Labour Court had found that present petitioner had not committed any misconduct and that there was no proof of misconduct or guilt on the part of the present petitioner and on recording such a finding if the Labour Court had reinstated him, then it could be said that Labour Court was not justified in refusing back wages to him. But on the evidence it has been found by the Labour Court that the present petitioner had committed misconduct, the punishment awarded was not justified and he was entitled to use his discretion u/s.11A of ID Act and that would be clear from the following observation of the learned Judge of the Labour Court in para 9 of his judgment, which is as under:

"Our High Court has also held in Special C.A.

No. 3753 that even under such circumstances punishment of dismissal is disproportionate. Thus the punishment inflicted on the workman should be reduced u/s 11A of the Act, and he should be reinstated without back wages. Previous misconduct are also not serious in nature"

Before that in the earlier para no.8 of the said judgment, the Labour Court has held as under:-

"Thus it cannot be said that the workman was guilty of the misconduct amounting to dishonesty. Admittedly, the workman was actually issuing

tickets when the bus was checked. The only misconduct of the workman is that he did not issue tickets within distance of 1.40 km. Thus the misconduct is minor and for isuch a minor misconduct punishment of dismissal which is the highest punishment is highly disproportionate."

In view of the observation of the learned Judge of the Labour Court it would be quite clear that denial of back wages are by way of punishment awarded by the Labour Court. This is not a case in which there was wrongful dismissal of the petitioner and the said wrongful dismissal has been set aside by the Labour Court and he has been reinstated. In the instant case what is found is that the petitioner had committed misconduct but the punishment of dismissal was quashed and set aside and consequently he was reinstated by awarding him punishment of non payment of wages. Therefore, the case which is relied upon by Mr. Rathod is not applicable to the facts of the present case. In the instant case, Labour Court had thought that the punishment in view of the misconduct committed by him, was to be only of non payment of wages, then it could not be said that the said discretion used by the Labour was either illegal or unjustified. It has been repeatedly laid down by the Supreme Court in the following decisions that the court or Tribunal are not to generally interfere with the quantum of punishment unless the same is disproportionate.

{See

1. 1995(8) JT 65 in the case of B.S.Chaturvedi vs. Union of India.
2. 1996 JT 551. in the case of State of UP & ors. Nandkumar Shukla & ors.
3. 1996(1) SCC 153 in the case of State of UP vs. Ashokkumar.}

Thus in the instant case when the Labour Court has thought it proper that the punishment was to be only of denial of back wages for the period for which he ceased to work, then it cannot be said that said discretion used by the Labour Court is such that this court should interfere with the same by using its discretionary powers under article 227 of the Constitution of India. The petition is therefore, dismissed. Rule discharged. No order as to costs.

(S.D.Pandit.J)

